

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE WORK STUDY SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
JUNE 9, 2009**

AGENDA ITEM #1 – CALL TO ORDER AND ROLL CALL

Mayor Schlum called the meeting to order at 5:00 p.m. in the Town Hall Council Chambers.

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Hansen, and Councilmember Dickey. Town Manager Rick Davis, Town Attorney Andrew McGuire, and Town Clerk Bev Bender were also present.

Vice Mayor Archambault and Councilmember Brown were not present at the meeting.

AGENDA ITEM #2 – DISCUSSION REGARDING CUT & FILL AND GRADING STANDARDS CONTAINED IN THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE IN ORDER TO IDENTIFY POTENTIAL REVISIONS TO THOSE STANDARDS. ALSO, DISCUSSION REGARDING POTENTIAL REVISION TO THE REQUIREMENTS FOR THE MAXIMUM DRIVEWAY SLOPE STANDARDS.

Town Manager Rick Davis addressed the Council and said that staff felt it would be beneficial for the Council as well as staff to have a discussion regarding some of the more important initiatives that the Planning & Zoning Commission is addressing right now. He said that of most importance were the cut and fill and grading standards and said that would be covered this evening in addition to other items.

Senior Planner Bob Rodgers addressed the Council relative to this agenda item and highlighted a brief presentation on this issue. He said that he would take the items one-by- one and then respond to any questions from the Council.

- 1. There is duplication between the Zoning and Subdivision ordinances regarding grading standards. Staff believes there may be an opportunity to move the grading standards all into the subdivision ordinance and remove them from the zoning ordinance in a manner similar to the landscaping standards.**
 - Sections 5.11.A – 5.11.D of the Zoning Ordinance deals with Land Disturbance Standards including grading drainage and cut & fill regulations.
 - Section 5.03 of the Subdivision Ordinance deals with Cut and Fill Standards
 - Section 5.04 of the Subdivision Ordinance deals with Hillside Disturbance and Grading
 - Section 5.05 of the Subdivision Ordinance deals with Washes and Drainage

Staff presented that the Commission should consider consolidating these sections all into the Subdivision Ordinance and simply reference the appropriate section(s) of the Subdivision Ordinance Section in the Zoning Ordinance.

The Commission directed staff to proceed with drafting these potential amendments for initiation.

Mayor Schlum said that the Commission's recommendation seemed to make sense – the consolidation of the language.

Councilmember Leger said that he was comfortable with Planning and Zoning's recommendation on #1.

Brief discussion took place among the members of the Council relative to this item and it was the consensus of the Council that the Commission's recommendation be upheld.

2. There are certain waiver provisions that could be streamlined to allow for staff approval rather than requiring public hearings before the Town Council. These provisions relate to unexposed cut or fill depth, utility disturbances or grading limitations in parks, golf courses or commercial properties.

- Section 5.04E.1 of the Subdivision Ordinance should allow for the Community Development Director to waive the fencing requirements in favor of alternative methods in certain situations. Sections 5.11.B.11 of the Zoning Ordinance already allows for such waivers.

Staff presented that the Commission should combine the sections as recommended above or at least make them consistent with each other.

In response to a question from the Mayor, Mr. Rodgers stated that he did not believe that the fencing had come up before but the cut and fill certainly had and the grading standards were discussed in the past as well. He said that staff was looking for ways to streamline processes even during the building process (making them easier). He noted that there were a lot of rocky cliff areas where chain link fences could not be placed. One ordinance allowed staff to waive it and another required it come to Council for a public hearing. He said that staff would recommend at least making them consistent and going one step beyond and allowing staff to make that decision.

Mayor Schlum asked for input from the Council relative to allowing Mr. Turner to issue waivers and provide alternative methods for fencing.

Councilmember Hansen asked if there had been any problems with the Zoning Ordinance (having the ability to waive it).

Mr. Rodgers said that they have had some people request it and that they approved some and denied some through the Zoning Ordinance. He added that the Subdivision Ordinance was the trickier one – the larger projects where typically the fencing was along roadways or something like that. He said that those cases would come before the Council under the current ordinances.

Councilmember Hansen stated it was working in the Zoning Ordinance and she did not see any problem with having it in the Subdivision Ordinance. Mayor Schlum stated that they would then make it similar to what was currently in the Zoning Ordinance (allowing the Planning & Zoning Director to issue waivers).

- Sections 5.11.B.6, 5.11.B7 and 5.11.B9 of the Zoning Ordinance allows the Town Council to waive the disturbance and/or grading standards.

Staff presented that allowing the Community Development Director to administer these waivers using the standards outlined in those sections would streamline the approval process and benefit applicants.

Councilmember Leger said that he was comfortable with the Planning & Zoning Commission's recommendation not to amend any of these items. He stated the opinion that they were working well and some of the issues could be controversial as far as cut and fill. He added that historically the various Councils had done a good job weighing the pros and cons and stated the opinion that it made a developer think twice and to him that was always very important. He added that it was not a matter of staff not having the skills and technical knowledge/judgment to make those calls. He stated that he concurred with P&Z that none of the items listed under #2 should be changed. The Mayor concurred but added that the one item he would not mind not coming to them would be basements.

Councilmember Hansen asked why Planning & Zoning decided not to go ahead with these items (under #2).

Mr. Rodgers explained that staff was asked to bring up as many of these issues (sections of the ordinance that had come up a number of times for discussion) as possible. He said it was not that they were looking to change anything; they just wanted to have them as part of the discussion. He added that when they did discuss them, P&Z had come back and said they were working as is.

The Mayor said that they are all right going along with P&Z's recommendation.

- Section 5.11.C.4 of the Zoning Ordinance allows the Town Council to waive the 10' maximum Cut & Fill limitations. This same section allows the Zoning Administrator to waive the standards if the cut is for an un-exposed basement.

Staff presented that the Town should consider allowing the Community Development Director to administer all waivers related to cuts and fills up to 20' deep on a case-by-case basis. Deeper cuts/fills could still be referred to the Town Council. Historically, the Town Council has not been agreeable to amending the ordinances in this manner and generally opted to retain their Permit Granting/Waiver authority over these issues.

The Commission directed staff NOT to proceed with drafting these potential amendments or initiation.

See comments above.

3. Commercial properties could be exempted from the cut & fill standards either completely or under certain conditions.

Staff presented that commercial properties should be allowed to cut and/or fill any necessary depth as long as they then back-fill any visible cuts/fills so that the finish grade does not present an unpleasant aesthetic.

The Commission discussed the possibility of requiring that any deviation from the standards be specifically noted on the Concept Plan so that any waivers would be approved only at the discretion of the Planning & Zoning Commission and would not be "by right."

The Commission directed staff to proceed with drafting these potential amendments for initiation.

Mr. Rodgers stated that #3 and #4 go hand in hand and the Council could talk about both at the same time. He said they should think of the cut and fill standards in #3 as the vertical and #4 the horizontal (hillside disturbance, grading, standards that they would like to take a look at altering them to allow a lot more flexibility for commercial properties especially along the corridor or within Colony Drive and the downtown areas/Technology Drive areas. He noted that the Commission agreed that that was something they could probably look at. He emphasized that these were strictly for commercial properties.

Mayor Schlum asked if staff knew what the Commission meant by "look at it" – and asked if it would be eliminating or modifying. He said that most commercial properties are pretty level and not like a residential piece where there are huge slopes.

Mr. Rodgers replied that the Commission asked staff to come back with something that would let them see what the ordinance would have required and let them then look at something different during the concept plan review for a new project so if it was different then it would be identified and there would be almost a specific waiver process as far as the grading standards for the commercial properties (would be done through concept plan review).

Councilmember Hansen asked if Mr. Rodgers could think of any newer commercial development that this would have benefitted (made the process a little smoother).

Mr. Rodgers said the new small strip mall located just this side of Phylliss Kern's Plaza (other side of Denny's) had a very large wash and some cut and fill issues and grading issues. He added that The Resort (Palisades &

Shea) was also a good example because there were a lot of cut and fill and grading issues involved in that approval.

Councilmember Dickey stated that she would not want to go forth with either one of these because she remembered them and discussing The Resort and she was particularly glad to have had the opportunity to discuss those things, particularly The Resort. She said she believed that they came up with a solution that worked and asked "what problem are they trying to solve" because both of those were examples of success.

Mr. Rodgers explained that this was another attempt to streamline the commercial development process and be more business friendly. He said they were looking at another way of doing the same review and having the same discussions regarding these issues but they would take place during the concept plan phase and would not require the second public hearing. He noted that the Council did not see concept plans as a general rule; they went to Planning & Zoning, and when they get approval then they could get their building permits. He added that requiring that second public hearing process added a lot more time and a lot more effort and money on the developers' part. He reiterated that staff was attempting to streamline the process.

Mayor Schlum said that the second public meeting would be for seeking a cut and fill waiver and Mr. Rodgers agreed. He stated that they had to keep in mind, and he was sure the Planning & Zoning Commission would agree that hills and natural beauty were a part of living in Fountain Hills, which was a unique community. He added that there would be times for cut and fills to be considered and possibly even some of the hillside disturbance areas on very steep lots if they were going to be located in a largely commercial area. He referred to the Monterra Ranch development (multi-family by MCO) and said they had the hillside preservation easement right there in the front and expressed the opinion that it looked odd. He added that it was natural desert but it was such a small piece that it looked like they were waiting for a drive-thru coffee shop to be planted there. He stated that maybe the process they had today to review those instances was not a bad one. He noted that empowering a developer to do something tremendous that might not fit the Town's current standards, or would not go through the public process without a waiver or an adjustment to the current requirements was something they still might want to have so they that understand we want to see tremendous development in Town, quality development, knowing that every lot did not fit black and white standards. He added that they needed to approach them as unique pieces of property. The Mayor stated that just eliminating it completely was something he probably, by right, would not be comfortable with.

Councilmember Leger advised that he was comfortable leaving #3 and #4 as is and said that between the opportunity for these items to go through scrutiny at Planning & Zoning and then come before the Council, if necessary, for waiver discussions was healthy. He added that between waivers and development agreements they were able to make these things work and he believed this has historically been the case. Councilmember Leger said that as the Mayor mentioned, Fountain Hills was a unique community and emphasized the word "Hills." He stated that as property becomes scarce, he knew that there were more concerns about "opening the levy" but he thought that this Council and future Councils would look at the environment and the needs of the community and expend effort to make projects work as they have done in the past. He noted that he was just not comfortable at this time going ahead with #3 or #4 and would not suggest moving forward with either one of those.

Town Manager Rick Davis said that he believed this specific recommendation was borne out of concern that there were certain properties that were available or that would be available specifically along the Shea corridor for commercial development. He added that without abandoning what was a worthwhile commitment to preserving the natural and aesthetic environment, they could still also preserve the option for the Council to work with certain parties who want to build along that corridor. He noted that it remained and forever would be the most valuable commercial property that the Town had and so as long as the Council was comfortable that given what initiative or idea might surface in the future relative to bringing commercial development to Town, they would still have the option of working with those entities, then he was really happy with that. He said that he would ask for consideration relative to preserving that ability because who knows what would happen in the future and they obviously wanted to be able to welcome businesses and build a commercial base as they struggle

to meet their fiscal requirements for the future. He added that the only way to do that was to take full advantage of that very valuable “power strip” that they called the Shea corridor. He said he just wanted to present a plea for them to keep that in the front of their minds as they move forward.

Mayor Schlum asked if anyone else wanted to provide input and noted that they had talked pretty much about maintaining what there was and maintaining the Council’s opportunity to review cases. He reiterated that they had a Council that wanted to see great development and they were business friendly so they would like to keep all options open, but not everything was going to be by right (where someone could just eliminate a hill).

Councilmember Hansen stated that the way this is worded, i.e., “under certain conditions,” she would not be uncomfortable just seeing what staff and the Commission might come back with in terms of possibilities. She clarified that she was not saying that the Council would do it but it might be interesting to see what they could come up with.

Councilmember Leger commented that as he read and re-read the document, he thought of that as well – that it kind of loosened it up under certain conditions. He pointed out that that was what the Council did; under certain conditions they approved waivers and reviewed projects. He stated that the notion of not being business friendly was false; if they did not allow waivers or if they did not have those debates, then they might be considered not business friendly but they do. He added that he is always looking for a balance between community friendly and business friendly did. He said that with respect to some of the property along the Shea corridor, they have to understand the history in terms of how that became protected land. He stated that certain projects happened at locations that resulted in an uproar on the part of the citizens and additional property was preserved. He said that as long as he was a resident of this Town he was going to try and remind people of past promises and why things have been done the way they have. He stated that they were going to be “pushing more up against that” as they have less and less commercial property to build on. He advised that he stood firm on those two items and felt they should remain where they are at. He added that he did not believe that was status quo; he thought that what they did now created a lot of flexibility and discussion. He noted that the debates have always been very thoughtful and stated the opinion that the developers have gotten their money’s worth as well as the citizens.

Councilmember Dickey commented that they were being business friendly to existing businesses by not changing the rules on them – rules that they had to comply with when they did their projects – and so to change now would not seem quite fair to them. She added the opinion that it was overall business friendly to have the community that they have and the way it looks because ultimately that was what drew people to the Town, their uniqueness. She noted that this Council has shown a willingness to place items on the agenda as quickly as possible and to be reasonable about making some changes and that was being business friendly as well.

Mayor Schlum said that he recalled, when he was first appointed to the Council, that they were not really comfortable with cuts more than 10 feet but then they became comfortable with it and started approving cuts over 20 feet on plans for waivers if they were not visible once the project was completed. He stated that that was what this was looking for. He added that they have to make sure that staff or whoever was interacting with the businesses understand that the Council was willing to consider those things, particularly if they were not visible. He advised that having the cases just go to a concept plan review and then before Planning & Zoning was probably not something that he was comfortable with. He said they should just keep it going the way it was and if there were examples that show the Council that businesses were not coming to Town because the developers did not believe there were other options, and then maybe they would need to consider something along the lines of what P&Z was looking at. The Mayor asked if the Town had lost development opportunities because developers did not feel they have a chance given the Town’s commercial property regulations.

Mr. Rodgers replied that he was sure that that has happened but said that they had no way of knowing if they simply came in, looked at the Town’s ordinances, and decided not to proceed in Fountain Hills if they never contacted staff. He pointed out that a lot of the developers do their research over the Internet (review the website, research ordinances) and some may then decide they could not go forward in Fountain Hills.

Mayor Schlum commented that the way it was written was something he would not suggest but maybe in light of what Councilmember Hansen was saying, without spinning the wheels of staff, he was not sure whether there was a way to limit their inability to attract businesses that they would all love to see here and not change the process too dramatically.

Councilmember Leger stated the opinion that they operated in a different environment now than they have in the past – they now have a full time Economic Development Administrator and from what he has seen of her work to date, which was in line with the Town Manager’s vision for that position, they were being very proactive. He added that by being more proactive, the Town was being marketed and they were going after projects. He said that was very different than someone just making a cold call or blindly going on the Internet; Lori has an understanding of the processes. Councilmember Leger expressed the opinion that their pro-activeness would lessen the chance of people walking away, particularly if they were pursuing a particular business on a particular site that was going to be beneficial to the Town. He added that the Town would also be more flexible when looking at a project like that.

Councilmember Hansen asked why the Commission decided to have staff move ahead and look at this now.

Mr. Rodgers responded that the Commission wanted to eliminate duplication of effort (having to go before two different boards for a public hearing process). He noted that the process was pretty open and they would be getting the baseline of the ordinance and then whatever was different presented in front of them and they felt they would be able to make a decision on whether the project was a good idea. He pointed out that anything that was on a concept plan, if denied, could always be appealed to the Council. He added that it was one of the things they discussed as far as being business friendly.

Mayor Schlum stated that basically he believed they would be looking for Planning & Zoning to give them a waiver by approving their concept plan. He added that the better visibility going before the Council was probably the best place for that. He noted that they would not be changing the cut and fill standards, they would be changing who approved them. The Mayor reiterated that the process seemed to work right now and he just hoped that the development community was hearing that the Town would consider waivers and he thought that that has occurred over the last four years but not prior to that.

Mr. Rodgers said that he did not believe that staff has actually brought many of these types of waivers for commercial properties before the Council. He added that they were coming in fast and furious on the residential projects for a year or so but he believed that the Council sent out a clear message that they did not like that and it slowed down. He stated that that might have “spilled over” into the commercial developers’ mindset as well; that the Town did not like those types of waivers.

Mayor Schlum asked whether finished grade was part of the calculation for commercial grade, or a finished floor for elevation of a building. Mr. Rodgers replied that everything was measured from existing grade.

Mayor Schlum asked Councilmember Hansen if she had anything in mind that they could consider because he did not want to dissuade anybody from considering the Town. He said that once they got into a dialogue, he was sure that staff would say “this is something we would like to consider, and bring it forward.”

Councilmember Hansen asked whether there would be any comfort in considering the size of the cut and fill (if it was under so many feet they could do it in a revised way and if it was over they could do it the traditional way). She questioned whether it would help to put parameters on it.

Councilmember Leger said that Councilmember Hansen’s idea was an interesting one but added that what concerned him about that was that right now they had a standard and they could look at project-by-project and if they changed the standard, then there might be some projects that came before them that really did not need that, whereas for others it might be more important to do that. He stated that the way it was now they had an opportunity to look at project-by-project and he had a hard time trying to come up with whether it’s 10 feet, 12

feet or 15 feet because for one project they might say 17 feet was what they needed and it made sense but for another project maybe 9 feet would work. He said he preferred to have the flexibility to set a standard, set a bar, and then have people go through the process and debate their argument. He reiterated his opinion that what they were doing worked as long as they were flexible and provided opportunities for waivers in development agreements.

4. Consider relaxing the Hillside Disturbance requirements for commercial development on steep commercially zoned lots.

Due to the different requirements of commercial property development, staff presented that the Commission should consider relaxing the Cut & Fill, Grading, and Land Disturbance standards for commercial property development in certain designated areas or zones. Such areas might include the Shea Boulevard corridor, the Downtown business districts, The Colony Drive/Enterprise Drive Commercial area and the Industrial zoned areas.

The Commission again discussed the possibility of requiring that any deviations from the standards be specifically noted on the Concept Plan so that any waivers would be approved only at the discretion of the Planning & Zoning Commission and would not be “by right.”

The Commission directed staff to proceed with drafting these potential amendments for initiation.

The Mayor said, just to be clear, that there were Hillside Preservation Easements and then there was Hillside Disturbance. He explained that Hillside Preservation was easements set aside through one form or fashion and the land could not be used, it was protected. He added that then there was Hillside Disturbance, which would be a calculation of new development, not over a Hillside Disturbance (it was not considering getting rid of a Hillside Preservation Easement given changes to Hillside Disturbance).

Mr. Rodgers concurred with the Mayor’s statement and said whenever they have a new development, based on the slope categories of the lot that was being developed, they had the Hillside Disturbance Ordinance that said that a certain amount of a slope would be developed to a certain percentage so they would end up with a buildable envelope area on a lot. He stated that staff was proposing to allow a little larger area for commercial lots than would typically be allowed for a residential lot. He noted that the hillside standards for grading were pretty strict and it was hard for people to even get the new houses on some of the lots. He added that to apply these to some of the commercial lots would be very restrictive and require smaller buildings. He said the thought was to loosen up those standards a little bit for commercial properties and let them have a little bigger footprint, especially when they had to build parking lots.

Mayor Schlum said that that seemed like something good to look at in all commercial areas where it would not infringe on residential or where people would expect to see some open space. He stated that in the commercial areas he would be more open to considering that but added that most of the Town’s commercial areas met up with residential areas so he did not know how to draw that line.

Mr. Rodgers agreed that most of the areas were pretty flat and along Shea Boulevard there were going to be some lots that had some challenges and along Palisades as well on the corner where The Resort was going to go. He added that potentially the Copperwynd area, if they ever decided to do more development, would also be tricky.

Mayor Schlum asked what the current process was regarding Hillside Disturbance and the ability for Council to waive things. Mr. Rodgers responded that it would be the same process as usual, a development agreement or a waiver process.

The Mayor said that the Council would still be considering those, they would just not go through the P&Z for concept review approval at that level and Mr. Rodgers concurred. Mayor Schlum stated that it was a question of whether they wanted to keep it at the Council level or at the P&Z level.

Mr. Rodgers commented that the idea behind this discussion was to drop it down to the P&Z level to allow approvals to be accomplished quicker. He added that if the thinking now was to have Council maintain what they have, which was what it sounded like, and then they could do that too.

Councilmember Hansen asked if it would be possible, before totally closing the door on this, to hear what Councilmember Brown had to say on this issue, especially since he was the person who was behind this.

Mayor Schlum agreed and said that it would be good to keep the dialogue open on this issue. He added that he agreed on the two areas thus far (#3 and #4). He stated that they would hear from Councilmember Brown on this when the opportunity arises. Mr. Rodgers commented that it was his understanding that “No” was the consensus of the Council on #3 and the Mayor said they would just keep it open for dialogue.

Councilmember Leger advised that he had an opportunity to attend some of the hearings and he did not necessarily see Councilmember Brown advocating for those. He added that he thought that there was more pressure coming from others and he did not think Councilmember Brown was driving those arguments.

Mr. Turner stated that his recollection was that Councilmember Brown was more concerned initially about #5 and Councilmember Leger agreed.

Councilmember Leger said that Councilmember Brown weighed in very heavily on that one and just kind of facilitated the discussions on the other one. He added that he did not want to “shut the door” on anyone. He said that in listening to the dialogue it was interesting to note that here they were talking about Hillside Disturbance and they have the HPE, but part of the dialogue that was going on between some of the advocates was “let’s expand the disturbance envelope for larger projects” but if they butted up against HPE, then they could work on abandoning the HPE and move the project further. He stated that he knew specifically on Shea what property was in mind when this conversation occurred and that was what really concerned him. He noted that people would come forward when they bump up against a HPE and ask to move it, to pay for it, to put it someplace else and that property on Shea was like a chess match. He said it was not his decision to open or close the door on this discussion; he just wanted to present his opinion on the matter.

Mayor Schlum commented that even if they did close it they could always reopen it.

Councilmember Leger stated that he was also concerned about the amount of staff time it was going to take to go back and develop something palatable for #3 and #4.

The Mayor said that they would wait to get Councilmember Brown’s valuable input and not have staff go further at this point. Councilmember Dickey acknowledged that Vice Mayor’s Archambault’s input would be needed.

5. Consider allowing greater retaining wall heights in certain situations. Possibly through staff reviews and waiver process.

Staff presented that the current standards for retaining wall heights were appropriate and should remain as is. The current regulations for maximum and average retaining wall heights:

Average Slope at Wall location *-%	0% - 15%	>15%
Maximum Height (feet)	8’	10’
Average Height (feet)	6’	7’

- * As determined by averaging percentage of slopes shown on sections through grading plan submittal.

Staff stated that by allowing the terracing of higher cuts or fills the Town requirements were better from an aesthetic point of view than allowing a single high wall.

Some options for consideration could be measuring the height of the walls from “finish” grade rather than the current method of measuring from “natural” grade. Or, removing the “Average” requirement and simply using the “Maximum” height requirement as the limiting regulation.

The Commission directed staff NOT to proceed with drafting these potential amendments for initiation.

Mayor Schlum noted that this was one item that the Commission directed staff not to proceed with at this time.

Mr. Rodgers said that was correct and they had a discussion on the item regarding the retaining wall heights. He stated that there had been numerous attempts by people developing properties to have the Town increase the retaining wall heights. He referred to a chart (shown above) listing the current maximum height allowances and the required averages.

The Mayor asked whether the thinking was that this would ultimately result in less wall being visible because of how they had to stagger them now and Mr. Rodgers said yes, they were terraced up the hill. He added that it allowed them to reach the same depth as one big wall; it just took up more room to do it. He explained that they looked at a couple of different options (measuring the wall from finished grade rather than natural grade to provide approximately another foot and eliminating the averaging requirement and just allowing for the maximum height of the wall). He reported that staff’s recommendation was that the walls were fine the way they are and the P&Z had agreed.

It was the consensus of the Council to support the Commission’s recommendation on this item.

6. The current maximum allowable driveway slope is 18%. There has been some discussion regarding increasing the allowable slope to 20%.

Staff originally believed that in certain situations allowing the slope of residential driveways to be a maximum of 20% rather than the current 18% would be of benefit. There was currently a mechanism in the Zoning Ordinance that allowed an applicant to request a waiver from the Town Engineer to increase their driveway slope from 18% to 20%. Potential problems might be that steeper slopes would require longer vertical curves to level out at driveway entrances and garage entries, thereby potentially requiring deeper cut or fill areas. Also, steeper slopes would necessitate that level areas be created at driveway entrances to ensure proper and safe visibility.

Allowing 20% by right might have alleviated numerous residential development problems. However, due to the Fire Department’s regulations presented at the Commission’s Work Study Session, staff must revise their opinion and recommend that this item NOT be brought forward. Rather, staff recommended revising the existing ordinance to eliminate the provision that allowed for the 20% slope waiver so as to bring the Zoning Ordinance into conformity with the Fire Code.

Due to lack of a quorum at the Work Study Session, the Planning and Zoning Commission did not take any action on this item.

Mr. Rodgers advised that this item had generated a lot of discussion and the P&Z discussed it at their May 14th Work Study Session but they did not have a quorum so they were not able to give staff direction and they planned to discuss it again at their meeting this coming Thursday. He reiterated the information contained in the staff report and noted that staff had received a number of requests over time to have the percentage increased to 20%. He said that the Zoning Ordinance did contain a clause that allowed the Town Engineer to give a waiver

up to 20% under special circumstances, but referenced the Fire Department's (Fire Code) 15% driveway slope requirement with a maximum of 18% if they provide all sorts of other stipulations. He reiterated that staff recommended that the Zoning Ordinance be revised to eliminate the provision that allowed for the 20% slope waiver so as to bring the Zoning Ordinance into conformity with the Fire Code and maintain the 18% maximum (or perhaps push it back down to 15% as a norm).

Councilmember Hansen agreed with the 18% maximum.

Mayor Schlum said that if they went lower they would end up with a lot more serpentine and a lot more driveway. The requests that had come forward have been to reduce the amount of driveway needed to access homes. Mr. Rodgers concurred and said that there were a number of cases where even that would not work and they would have to come in for a cut and fill waiver. He noted that the steeper driveways would require more radical, vertical curves.

Mayor Schlum asked whether the Town Engineer issued many waivers and Mr. Rodgers said that he believed he has issued one since he has been here. In response to a question from the Mayor, Town Engineer Randy Harrell advised that waivers are issued about half the time.

Councilmember Leger commented that he was hearing was that 15% was the norm but they could move up to 18% and asked if they would need a waiver to do so. Mr. Rodgers replied that the current Zoning Ordinance allowed them to go to 18% by right and the Fire Code called for 15% and if someone wanted to go above that they had to add sprinklers and other things in order to obtain a sign off from the Fire Department.

Councilmember Leger questioned whether staff was recommending that they align themselves with the Fire Code.

Mayor Schlum noted that P&Z had talked about going to 20% and the Fire Department talked about 15% and they were at 18% now. The Mayor asked whether they wanted to keep it the same or go in one direction or the other and noted that staff had recommended they keep it at the same percentage.

Assistant Fire Chief Randy Roberts said that he discussed this issue with the Valley Fire Marshall's Association as well as the Arizona Fire Marshall's Association to determine best practices. He reported that pretty much across the board they felt that 15% should be the maximum. He added that the Department was comfortable with the 18% but not any more than that. He said if they went with 18%, the added stipulations will apply.

Mayor Schlum requested input from the Council and receiving none said that the percentage would remain unchanged.

7. There is duplication between the Zoning and subdivision ordinances regarding perimeter or fence wall height regulations. Staff believes that moving all such standards to the Zoning Ordinance only will reduce confusion.

- Section 5.09 of the **Zoning Ordinance** deals with Walls and Fences
- Section 5.11.E of the **Zoning Ordinance** deals with Retaining Walls
- Section 5.06 of the **Subdivision Ordinance** deals with Retaining Walls
- Section 5.07 of the **Subdivision Ordinance** deals with Walls and Fences

Staff presented that the Commission should consider consolidating these sections all into the Zoning Ordinance and simply reference the appropriate section(s) of the Zoning Ordinance in the Subdivision Ordinance.

The Commission directed staff to proceed with drafting these potential amendments for initiation.

Mr. Rodgers stated that this item was very similar to #1 and there was duplication of ordinance requirements for walls and fences and retaining walls in the Zoning Ordinance and the Subdivision Ordinance. He reviewed

staff's recommendation listed above to consolidate those all into the Zoning Ordinance with a note in the Zoning Ordinance explaining where the sections could be found. He noted that the ordinances would not be changed; they would just be moved/consolidated – no changes to the language, just a placement change. The members of the Council concurred with staff's recommendation.

Mr. Rodgers asked whether there was anything that the Council thought staff should be looking at that they might have left out as far as the cuts and fills, grading, etc.

Mayor Schlum said that he wanted to ask about Mr. Harrell's e-mail and asked whether everything he raised has been addressed.

Mr. Harrell stated that the big item that was not covered is cuts in rock and that is one that the Council dealt with by utilizing development agreements so far (Eagle's Nest and Adero Canyon). He said that the Council could continue to operate in that manner if they so wish.

The Mayor suggested that they talk more about that issue. Councilmember Dickey asked Town Attorney Andrew McGuire whether he had any comments to make on the items and Mr. McGuire replied that the only concerns he would have had was if they had Prop. 207 issues and nothing in the discussion this evening caused him concern.

Mayor Schlum thanked Mr. Rodgers for his presentation and the Council for their valuable input.

AGENDA ITEM #3 – ADJOURNMENT.

Councilmember Contino **MOVED** to adjourn and Councilmember Leger **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The meeting adjourned at 5:55 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Jay T. Schlum, Mayor

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Study Session held by the Town Council of Fountain Hills on the 9th day of June, 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 2nd day of July 2009.

Bevelyn J. Bender, Town Clerk